

Members

Sen. Sue Landske  
Sen. David Ford  
Sen. James Arnold  
Sen. John Broden  
Rep. Kreg Battles  
Rep. Philip GiaQuinta  
Rep. Robert Behning  
Rep. Ralph Foley  
Hon. John G. Baker  
Michael McMahon  
Anita Samuel  
Jason Thompson  
Michelle Gough  
Robert S. Schein



## CODE REVISION COMMISSION

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John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: December 12, 2007  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St., Room 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Rep. Philip GiaQuinta, Chairman; Rep. Robert Behning; Rep. Ralph Foley; Rep. Kreg Battles; Sen. James Arnold; Sen. David Ford; Hon. John G. Baker, Chief Judge, Indiana Court of Appeals; Mr. Michael McMahon, representing Chief Justice Randall T. Shepard, Indiana Supreme Court; Ms. Anita Samuel, representing Gov. Mitch Daniels; Ms. Michelle Gough, representing Secretary of State Todd Rokita; Mr. Robert S. Schein.

**Members Absent:** Sen. John Broden; Sen. Sue Landske; Mr. Jason Thompson, representing Attorney General Steve Carter.

**Staff Present:** Mr. John (Jack) Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Ms. Rebecca Mortell, Deputy Director, Office of Code Revision; Mr. Steven Wenning, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## **I. CALL TO ORDER**

The meeting convened at 1:40 pm in Room 233 of the State House.

## **II. REVIEW OF MINUTES**

The Commission approved by consent the minutes of the Commission's last meeting on October 25, 2007.

## **III. TECHNICAL CORRECTIONS BILL**

Mr. John Stieff, Director, Office of Code Revision, reported the Office would be presenting today the final version of the proposed 2008 Technical Corrections (TC) Bill. He explained that this year's TC bill (which exceeds 300 pages in length) contains fixes for 61 unresolved conflicts from the last session of the General Assembly. He reported that the OCR staff had resolved conflicts involving approximately 450 Indiana Code sections during the legislative session, but that it had not been possible to resolve all of the conflicts because of the great volume of legislation that passed during the day and evening of the legislative session's final day.

Mr. Stieff also stated that at the previous meeting the Commission had instructed the Office of Code Revision to incorporate into the 2008 TC bill certain provisions amending the 1985 judges' pension law because legislation passed in the 2007 session mistakenly amended the 1977 judges' pension law instead of the 1985 judges' pension law. Mr. Stieff then turned the floor over to Mr. John (Jack) Ross, Executive Director of the Legislative Services Agency (LSA), for further comments on this matter.

Mr. Ross addressed the Commission on the issue of whether the judges' pension provisions described above should be included in the 2008 TC bill. He stated that the TC bill is a bill prepared annually for the Commission by LSA's staff exclusively for the purpose of correcting technical problems in legislation passed during previous legislative sessions. Mr. Ross stressed the importance of restricting the 2008 TC bill to the resolution of problems that are technical in nature in order to maintain the integrity and credibility of the technical corrections process. He stated that if the 2008 TC bill includes substantive provisions, in future years members of the General Assembly may doubt the assurances of LSA staff that other TC bills are purely technical in nature.

Mr. Ross said that the Legislative Services Agency considers the judges' pension provisions (which are described in detail in the 10/25/2007 minutes of the Code Revision Commission) to be substantive in nature. He pointed out that if those provisions were to be included in the 2008 TC bill, the 2008 TC bill, to the best of his knowledge, would be the first TC bill to have a fiscal impact. Mr. Ross said he had spoken individually with Representative Buell and with members of the Code Revision Commission before the meeting to explain LSA's concern about the inclusion of the judges' pension provisions in the 2008 TC bill, and he asked the Commission to reconsider its decision to include those provisions in the 2008 TC bill.

Mr. Ross said LSA regrets that the 1977 judges' pension law was mistakenly amended in 2007 when an amendment to the 1985 judges' pension law was intended. Mr. Ross especially wanted to extend a public apology to Judge Baker for having passed along incorrect information to him about whether one retired judge had purchased service credit under the 1977 pension law as amended by the 2007 legislation. (An employee of the administrative agency that administers the pension funds had informed LSA that this was the case, but the administrative agency later informed LSA that the earlier information given Mr. Ross was incorrect.) Mr. Ross concluded by stating that LSA would like to see the judges' pension provisions removed from the 2008 TC bill and allowed instead to proceed through the legislative process as part of a regular bill. (The provisions are contained in a separate bill prepared this summer by the Pension Management Oversight Commission.)

Representative Foley commented that it was very telling that inclusion of the controversial provision in the technical corrections bill would require a fiscal impact statement. After some discussion, Senator Ford moved to amend the bill to take the controversial provision out of the technical corrections bill. After being seconded, the motion was adopted by consent.

Craig Mortell, Deputy Director of the Office of Code Revision, then addressed the Commission about other matters concerning the 2008 TC bill. He drew the Commission's attention to PD 3672, the draft containing all of the SECTIONS proposed by staff for inclusion in the 2008 TC bill, and to the SECTION-by-SECTION outline of PD 3672, which contained a short description of each SECTION in PD 3672 and indicated which SECTIONS had been present in TC bill drafts previously reviewed by the Commission.

Mr. Mortell said that most of the SECTIONS in PD 3672 that had not been present in drafts previously reviewed by the Commission were rather unremarkable, dealing mainly with technical matters like misspellings, missing conjunctions and articles, incorrect internal references, and the repeal and striking of Code provisions that have expired by their own terms. However, he highlighted the SECTION amending IC 23-19-1-3, which currently names a number of federal statutes and provides that, for purposes of the Indiana Uniform Securities Act (IC 23-19) added to the Indiana Code in 2007, a reference to one of these federal statutes means that federal statute "as in effect January 1, 2009." He explained that the intended effective date for the entire article IC 23-19 had been January 1, 2009, but that before the bill adding IC 23-19 was introduced in the 2007 session the decision was made to change the effective date to July 1, 2008. However, the "January 1, 2009" date in IC 23-19-1-3 was overlooked when the change in the effective date was made, and the Secretary of State's office has now asked that the 2008 TC bill change the date in IC 23-19-1-3 from "January 1, 2009" to "July 1, 2008."

Mr. Mortell reminded the Commission that it had directed him at the August 16 meeting to eliminate SECTIONS in the first 2008 TC draft that amended IC 36-8-22-13, IC 36-8-22-14, and IC 36-8-22-16. These SECTIONS were changing references to an "agreement entered into under section 12 of this chapter" to an "agreement entered into under this chapter" because the "section 12" in question (IC 36-8-22-12) does not specifically provide for entering into an agreement. However, Commission member John Okeson observed at the August 16 meeting that it was unclear whether there was any provision in the entire chapter for entering into an agreement. Mr. Mortell assured the Commission that its directive had been followed and that the SECTIONS in question were not present in PD 3672.

Mr. Mortell then brought up a final item for discussion: the potential addition to the 2008 TC bill of a SECTION that would amend IC 9-25-6-7 by eliminating a provision (subsection (b)) that was declared unconstitutional by the Indiana Supreme Court in 1981. He distributed to Commission members a memo that made the following points:

- Under the terms of IC 9-25-6-7 (which was located in the Code at IC 9-2-1-11 before the 1991 recodification of IC 9), if a motorist owes another person a sum of money under a civil judgment arising from a motor vehicle accident, the motorist's driver's license and vehicle registration are subject to suspension until the motorist satisfies the civil judgment.
- Subsection (b) of IC 9-25-6-7 provides that the discharge of the outstanding civil judgment in a bankruptcy case (which is a matter of federal law, not state law) does not relieve the judgment debtor from the driver's license and vehicle registration suspensions.
- The Indiana Supreme Court, in an opinion authored by the former Chief Justice Givan in the 1981 case of Perkinson v. Woody (419 N.E.2d 1306), declared the provision now found in IC 9-25-6-7(b) to be "unconstitutional in that it violates the Supremacy Clause of the United States Constitution" (i.e., Article VI, Clause 2 of the United States Constitution, which provides that "(t)his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the land; and the Judges in every State shall be bound

thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

- An Indiana attorney contacted the Office of Code Revision recently and asked why IC 9-25-6-7(b) had not been removed from the Indiana Code, and staff decided to bring to the Commission the question of whether IC 9-25-6-7(b) should be eliminated through the 2008 TC bill.

Mr. Mortell stated that the Commission has not made a practice of eliminating a provision from the Indiana Code through the TC bill as soon as the provision is declared unconstitutional. He recalled a Commission meeting of many years ago in which former Senator Les Duvall argued against adopting that practice, saying that a provision declared unconstitutional by one court or under one set of circumstances might be upheld by another court or under a different set of circumstances. On the other hand, Mr. Mortell said, it could be argued that the case for eliminating IC 9-25-6-7(b) through the 2008 TC bill is especially compelling because:

- IC 9-25-6-7(b) was declared unconstitutional by Indiana's highest court;
- IC 9-25-6-7(b) was declared unconstitutional on the grounds that it violates the Supremacy Clause of the U.S. Constitution, which is a bedrock of American constitutional law;
- more than 25 years have passed since IC 9-25-6-7(b) was declared unconstitutional, and nothing has happened over that period to suggest that IC 9-25-6-7(b) might in the future be found to be constitutional; and
- after the 1981 case of Perkinson v. Woody was decided, the Title 9 recodification project moved the provision declared unconstitutional from its former place in the Code to IC 9-25-6-7(b), which might make readers of the Code think that IC 9-25-6-7(b) is a vital part of the law notwithstanding the Supreme Court's 1981 decision.

Members of the Commission then discussed whether the 2008 TC bill should remove subsection (b) of IC 9-25-6-7 from the Indiana Code.

Representative Foley commented that removing a provision from the Code through the TC bill because the provision has been found unconstitutional would be taking the Commission in a new direction because the reason for removing the provision would not involve a drafting error or any other sort of technical problem. He said he had no objection to the Commission taking this action but wanted to point out that the action would constitute a new direction for the Commission. Mr. Stieff replied that the traditional process of deciding which Code provisions should be addressed in the TC bill has not involved a consideration of the constitutionality or unconstitutionality of the Code provisions. However, IC 9-25-6-7(b) is a provision that is pretty clearly unconstitutional, Mr. Stieff said, and he suggested that the Commission might decide to remove a provision from the Indiana Code through the TC bill if the provision is "clearly unconstitutional." On the other hand, Mr. Stieff observed, in many cases it might be difficult to determine whether a provision is clearly unconstitutional, and therefore he was hesitant to say that using the TC bill to eliminate Code provisions declared unconstitutional would be a good thing.

Judge Baker discussed the question of whether the 2008 TC bill should remove IC 9-25-6-7(b) from the Code in the context of a larger question: what is the purpose of the Code Revision Commission? Isn't one legitimate purpose of the Commission, he asked, to police the statute book so that when the public tries to use it they won't be confused? Judge Baker pointed out that citizens of Indiana have far greater access to the Indiana Code today than they had in 1981, when Perkinson v. Woody was decided.

Judge Baker also stressed that the provision ruled unconstitutional in Perkinson v. Woody had been recodified in the 1991 recodification act; that, in other words, the General Assembly passed it again after the Supreme Court had declared it unconstitutional. Does this mean that the status of the provision is now uncertain despite the Supreme Court's 1981 ruling, he asked, and that opponents of the provision might have to challenge its constitutionality again? Judge Baker said he hoped that the Commission would not interpret its duties too narrowly. He said that it is laudable that staff cautions

the Commission to be conservative in its approach, but he wonders whether the Commission is sometimes too conservative. Judge Baker expressed the opinion that the provision ruled unconstitutional in Perkinson v. Woody should have been removed from the Code in 1991 when Title 9 was recodified, and that the Commission should take action to have it removed from the Code now.

Chairman GiaQuinta asked whether provisions ruled unconstitutional could be removed from the Code through a means other than the TC bill. Representative Foley replied that perhaps it could be done in a companion bill. Expressing agreement with Judge Baker's comments, Representative Foley said that the Indiana Code needs to be informative and not "tricky," and that the provision ruled unconstitutional in Perkinson v. Woody probably should have been removed from the Code in 1991 when Title 9 was recodified.

Senator Ford commented that Commission members all seemed to agree on the unconstitutionality of IC 9-25-6-7(b). He said, however, that he would prefer to see IC 9-25-6-7(b) removed from the Code in a bill that was a companion or "trailer" to the TC bill rather than in the TC bill itself. Addressing IC 9-25-6-7(b) in a separate bill would, he said, allow the members of the General Assembly to focus on the proposed removal of IC 9-25-6-7(b) from the Code as a matter distinct from other Code revision matters and to decide from a policy standpoint whether they concur with the Commission that IC 9-25-6-7(b) should be removed from the Code. Judge Baker expressed his support for addressing IC 9-25-6-7(b) in a separate bill.

Senator Ford made a motion to deal with the pension issue and the unconstitutional provision issue in separate companion bills. Judge Baker seconded the motion. The motion was adopted by consent. The Commission also agreed by consent to include in the digest of the TC bill and the companion bills the following statement: "(The introduced version of this bill was prepared by the code revision commission.)". Finally, it was agreed by consent that Representative GiaQuinta would serve as author for the technical corrections bill and the companion bills.

#### **IV. TITLE 15 RECODIFICATION BILL**

##### **A. Recodification Bill: PD 3645**

Mr. Stieff presented Mr. Steven Wenning, Senior Staff Attorney, Office of Bill Drafting and Research, Legislative Services Agency, to present the final version of the Title 15 recodification bill. Mr. Wenning discussed proposed changes to the outline for the Title 15 recodification project (concerning agriculture and animals), which involved relocating some provisions in the Indiana Code outside Title 15. He presented PD 3645 as the final version of the proposed recodification bill, but mentioned that after the draft was mailed out, they had identified a few stylistic, typographical, and cross-reference errors that need to be corrected. He thanked several outside parties who had reviewed the proposed draft, including representatives of Purdue University, the Board of Animal Health, and the Professional Licensing Agency. Mr. Wenning said that staff would continue to review the bill as it goes through the committee process. He noted specifically that internal-cross references would be double-checked and that derivation and disposition tables would be prepared, indicating the source in current law of each new recodified section.

Mr. Wenning concluded his discussion of the recodification bill by relating that he had overheard a member refer to the recodification process as "mind-numbing". Mr. Wenning agreed, but said that he also viewed the recodification process as an "eye-opening" process because it afforded staff the opportunity to look at sections critically and gain a deeper understanding of Indiana's agriculture and animal laws. Mr. Wenning asked for the Commission to approve: (1) PD 3645 (Title 15 recodification bill), with the understanding that there would be additional technical and stylistic changes; and (2) the insertion of the boilerplate tag line in the digest of the recodification bill stating that the bill had been prepared by the Code Revision Commission. A motion was made and seconded to: (1) adopt PD 3645, with additional technical and stylistic changes; and (2) insert in the digest of PD 3645 the tag line that the bill was prepared by the

Commission. It was agreed by consent that Senator Ford would serve as author for the recodification bill.

In conclusion, Chair GiaQuinta commented that the recodification process was important work and they appreciated the work of staff. Representative Foley said it is a very necessary process for the health of the statutes.

### **B. Companion Bill to the Recodification Bill**

Mr. Wenning presented PD 3685, which he said represented a compilation of things the Commission had asked be put into a separate companion bill. He explained that the companion bill did the following:

- (1) Removes the restriction that only counties that contain more than \$20,000,000 in property tax value may make an allowance to an interstate fair corporation.
- (2) Requires that the petition for an allowance for a tax levy to support county 4-H clubs be published in a qualified publication in the county.
- (3) Prohibits tampering or altering with the identification mark on goats and cervids that have reacted positively to a tuberculin test.
- (4) Removes a conflicting provision that prohibits the state board of animal health from adopting rules to exempt certain testing requirements from animals that present little risk of spreading disease.
- (5) Requires that a person who is not the owner of an animal but has reason to suspect that the animal has a dangerous, contagious, or infectious disease to make a report to the state veterinarian or local health officer within 48 hours.
- (6) Provides that the stockholders or members of an agricultural cooperative created before February 23, 1925, by majority vote, may elect to be governed by certain agricultural cooperative laws by limiting its stockholders or membership.

Mr. Stieff discussed an issue re: IC 15-7-1-23 that was carried over from the last meeting concerning cooperative associations. At the last meeting Mr. Wenning suggested that the limitation of membership in the current law be extended to stockholders also. Because some Commission members had expressed reservations about the proposed change at the last meeting, Mr. Stieff had said that staff would gather more information and report back to the Commission at today's meeting. Mr. Stieff explained the problem in more detail, and mentioned that he had run the issue by two experts hired to draft the Uniform Limited Cooperative Association Act for the National Conference of Commissioners on Uniform State Laws, of which Mr. Stieff and Representative Foley are members. As a result of those discussions, it was staff's recommendation to add the phrase "stockholders or" to the provision in question. Mr. Stieff said he felt comfortable with that conclusion. Judge Baker moved to put this provision in the companion bill. It was agreed by consent. It was also agreed by consent that Senator Ford would author the recodification companion bill and that the bill would contain the tag line that the bill was prepared by the Commission.

### **V. JOINT RULE 20 PROCESS**

Mr. Stieff said that at the first meeting, he told the Commission that he was investigating a new way of doing Joint Rule 20s that would involve showing how a bill would look after a conflict is fixed in a Joint Rule 20 motion. He reported that was still his goal, but that he had run into a computer problem. He said OCR staff was working on OCR macros to ensure that LSA's in-house printing staff, which prints the bills, would be able to use the new Joint Rule 20 motion form and incorporate changes to a bill automatically, as is currently the case. He stated that if staff could figure out a way to get past the technological challenges involved in changing the computer program, he would present any proposed change in form to the leadership of the House and Senate and to each of the four caucuses to make sure that any change in form would be acceptable to all parties involved.

**VI. ADJOURNMENT**

Mr. Stieff thanked the Commission members for all their hard work this interim. The meeting was adjourned at 2:50 pm.